

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY	)	MDL NO. 1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	CIVIL ACTION: 01-CV-12257-PBS
THIS DOCUMENT RELATES TO	)	Judge Patti B. Saris
ALL ACTIONS	)	

**THE JOHNSON & JOHNSON DEFENDANTS'  
INDIVIDUAL REPLY MEMORANDUM OF LAW IN FURTHER  
SUPPORT OF DEFENDANTS' MOTION TO DISMISS  
THE MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

Defendant Johnson & Johnson ("J&J") and two of its affiliates, defendants Centocor, Inc. ("Centocor") and Ortho Biotech Products, L.P. ("Ortho Biotech") (collectively, the "J&J Defendants") by their attorneys Patterson, Belknap, Webb & Tyler LLP, respectfully submit this Individual Reply Memorandum of Law.

**REPLY ARGUMENT**

The J&J Defendants previously demonstrated that the Master Consolidated Complaint ("MCC") failed to allege fraud with particularity against any J&J Defendant. We showed, based on a discussion of each of the paragraphs in the MCC that made reference to a J&J-related defendant or product, that the MCC does not specify the time, place and content of any alleged fraud, and, further, that the MCC fails to specify the injury allegedly caused by any such fraud.

Not surprisingly, plaintiffs deny that the MCC is deficient in any respect. But plaintiffs' opposition papers fail to identify any allegations in the MCC that we overlooked. On

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the contrary, with respect to the J&J Defendants, plaintiffs merely point to one excerpt from paragraph 297 of the MCC, which we quoted in our prior brief, wherein plaintiffs allege that Centocor's web site told physicians that they could earn "additional revenue" by administering REMICADE® to their patients based on the difference between REMICADE®'s "published AWP and the actual selling price to physicians." Plaintiff's Consolidated Opposition Brief, p. 33. Plaintiffs do not explain how that truthful disclosure on Centocor's web site constituted a fraud on the plaintiffs. Nor do plaintiffs explain how J&J, Centocor or Ortho Biotech defrauded anyone with respect to any of the other J&J-related pharmaceutical products listed in the MCO. See MCO, ¶ 109.

In short, the only specific allegation in the MCO against any J&J defendant is the allegation that there was a spread between REMICADE®'s published AWP and its actual selling price, and that Centocor openly disclosed this fact to physicians (and to the rest of the world) on its web site. That is not an allegation of fraud, let alone an allegation of fraud that has been pled with particularity.

### **CONCLUSION**

For the foregoing reasons, and those set forth in our prior submissions, including the submissions in which the J&J Defendants have joined, the claims against the J&J Defendants should be dismissed with prejudice.

Respectfully submitted,

December 20, 2002



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